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THIRD CONFERENCE ON THE LAW OF THE SEA



PROVISIONAL

For participants only

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23 August 1974

ORIGINAL: ENGLISH

Second Session

FIRST COMMITTEE

PROVISIONAL SUMMARY RECORD OF THE SIXTEENTH MEETING

Held at the Parque Central, Caracas,
on Wednesday, 21 August 1974, at 4.15 p.m.

<u>Chairman:</u>	Mr. ENGO	United Republic of Cameroon
<u>Rapporteur:</u>	Mr. MOTT	Australia

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ORGANIZATION OF WORK (continued)

The CHAIRMAN reported that, pursuant to the decision taken by the Committee at its 14th meeting to establish a negotiating group under the chairmanship of Mr. Pinto to negotiate on articles 1 to 21 on the basis of document A/CONF.62/C.1/L.3, with particular emphasis on article 9 and the conditions of exploration and exploitation, he had held intensive consultations with members of the Committee. There seemed to be general agreement that the group should be composed of 50 members, nine representatives from each of the five geographical groups, and one representative for each proposal submitted. If he heard no objection, he would take it that that was acceptable to the Committee.

It was so decided.

Miss MARTIN-SANE (France), speaking on behalf of the Group of Western European and Other States, said that although the negotiating group would be limited to 50 members, it should be open for participation by all: members of the negotiating group would not speak on behalf of other members of their geographical group, who would all be entitled to participate in the work of the group on an equal footing with members. The group would be chaired by Mr. Pinto at meetings it held during the current session of the Conference and at any other session.

The CHAIRMAN said that the group would indeed be open-ended, and any interested delegation which was not a member of the group could participate in its work. If, however, there was a vote - although he sincerely hoped there would be no voting - only the 50 appointed members would be entitled to vote.

Mr. RAKOTOSIHANAKA (Madagascar), speaking on behalf of the African Group, said that it supported the establishment of an open-ended negotiating group in which all interested delegations could participate. The composition of the group should not, however, create a precedent for the composition of any other negotiating groups established in the future.

Mr. KASEMSRI (Thailand), speaking on behalf of the Asian Group, agreed that the negotiating group should be open-ended and that its composition should not create a precedent for the composition of any future working groups.

Mr. NAVARRETE (El Salvador), speaking on behalf of the Latin American countries, expressed its support for a negotiating group with limited membership, but

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open for participation by all. The group should not be limited to the current session of the Conference, but other groups could also be established, and for the sake of continuity, it would be desirable to have a standing intersessional group to deal with article 9 and the conditions of exploration and exploitation.

Mr. WALDRON-RAMSAY (Barbados) said it was the view of his Government that the life of the negotiating group should not extend beyond the end of the current session of the Conference. If the Committee decided to establish a new negotiating group with a new mandate at the next session of the Conference, the Conference would then constitute such a group. His Government could not delegate to any group, the Latin American countries or the Group of 77, any power to negotiate on its behalf beyond the formulation of alternative B of draft article 9 and the text on basic conditions of exploration and exploitation submitted by the Group of 77. His delegation had submitted a text for article 8 and it alone was competent to negotiate it.

Mr. THOMPSON-FLORES (Brazil) made some clarifications concerning the negotiating group. It was a subsidiary organ, under rule 50 of the rules of procedure, on which a certain number of countries would be represented and in which all members of the Committee could participate with full and equal rights. He could not conceive of any voting in the group; votes would be taken, as he understood it, only by the Committee or by the Conference itself. As for the terms of reference of the group, it would deal with articles 1 to 21, giving priority to article 9 and the basic conditions of exploitation in the area, and it would report to the Committee. However, the group might be unable to reach a consensus on every item referred to it and might therefore have to submit alternatives to the Committee which would then begin the decision-making process, and decide whether a vote was required. Negotiations would then commence at the highest level with a view to reaching a consensus in accordance with rule 37 of the rules of procedure.

With regard to the comment by the representative of Barbados, he said that it was his understanding that the group would cease to exist only when it had completed its mandate or if the Committee so decided.

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The CHAIRMAN noted that under rule 55 (c) subsidiary bodies were entitled to vote. He assumed that the representative of Brazil had said there would be no voting in the group because every attempt would be made to reach decisions by consensus.

Mr. RATNER (United States of America) said that he fully agreed with all that the representative of Brazil had said, including his comments on voting. It was his understanding that the negotiating group being established was not a subsidiary organ in the sense of rule 55 (c) and that a negotiating group could not, by definition, vote.

Mr. PASTOR (Spain) said that his views on the negotiating group were similar to those of the representatives of Brazil and the United States of America. All representatives would have full and equal rights. He further agreed that the nature of a negotiating group excluded the possibility of voting.

Mr. WALDRON-RAMSEY (Barbados) requested the Chairman to rule on the status of the negotiating group in the light of the statements by the representatives of Brazil and the United States. He understood it to be a formal group, and believed that its mandate should end at the current session of the Conference. If it was a formal group and was to be extended for the duration of all sessions of the Conference, its mandate should be reviewed and procedures established for reporting to the Committee. He reiterated his delegation's preference for a formal negotiating group of the Committee as a whole presided by the Chairman of the Committee.

The CHAIRMAN said that he regretted having to disagree with the representative of the United States on his interpretation of the status of the negotiating group, but would personally rule that it was a subsidiary organ within the terms of the rules of procedure. He hoped however that, consistent with the spirit of the Conference and the rules of procedure, there would be no need for voting in the negotiating group. All decisions should be reached at best unanimously, failing that by consensus, and voting resorted to only where absolutely necessary. As a sovereign body, the First Committee had the right to set up subsidiary organs and could terminate the mandate of the negotiating group at any time.

Mr. DE SOTO (Peru) said that his delegation shared the views of the Chairman. The Committee had the sovereign right to establish or abolish subsidiary organs and

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(Mr. De Soto, Peru)

also to decide whether or not to apply various parts of the rules of procedure to the deliberations of those subsidiary organs. The Committee therefore could very well determine that rule 55 (c) would not apply to the deliberations of the negotiating group, although such a determination would be superfluous. There was no question of issues coming to a vote in that subsidiary organ, since it had not been created on the basis of the usual principle of equitable geographical representation. For example the representation of the Group of 77 within the negotiating group was not in proportion to their overwhelming number. The representative of Spain had specified that the task of the negotiating group would be to negotiate in the strict sense of the word. The decisions of the negotiating group could not be binding on any delegation unless they were formally accepted by the Committee.

With regard to the reservations expressed by the representative of Barbados, rule 52 of the rules of procedure recognized the right of any State that was not a member of a committee or subsidiary organ to explain its views to that body on any proposal that that State had made. Thus as a sponsor of amendments to article 8 the delegation of Barbados would have the opportunity to make a statement on that subject to the negotiating group.

With regard to the continuity of the mandate of the working group, his delegation supported the view of the representative of Brazil. Perhaps the representative of Barbados would be able to accept that same view if a minor modification were made, namely that if the negotiating group successfully completed all of the terms of its mandate at the present session, it would then cease to exist. Otherwise its mandate would be extended to include the next session of the Conference.

The CHAIRMAN said that in his opinion the Peruvian suggestion to exclude the possibility of a vote in the negotiating group would require an amendment to the rules of procedure. However since in practice the essence of a negotiating group was to negotiate and not to make decisions, such complications could be avoided. It would be unnecessary for any delegation to invoke rule 52, since the negotiating group was open to the participation of any State, whether a formal member or not.

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Mr. BENNOUNA (Morocco) said that a subsidiary organ as traditionally defined depended completely on its parent body which retained all its competences. It was therefore inconceivable that the negotiating group could make decisions which would be binding on the Committee as a whole, since the decisions of the Conference were to be reached by consensus and consensus logically required the participation of all States. Therefore, the Committee was the most appropriate form for any vote.

The CHAIRMAN reassured delegations that no decision would be made before coming before the Committee for approval. It was conceivable that the 50 members of the negotiating group might reach conclusions and make recommendations which would ultimately be rejected by the approximately 100 other members of the Committee. For that reason the members of the negotiating group would be encouraged to keep in contact with their geographical groups and other groupings to ensure that the negotiating group would not stray too far from the general orientation of the Committee.

Mr. OGOLA (Uganda) said that the term "negotiating group" itself caused some difficulties for his delegation. He had come to Caracas as a plenipotentiary to negotiate for his country and could not accept a situation in which any organ would negotiate on his behalf. Perhaps the intention in creating the negotiating group had been to set up a consultative or exploratory body which would report the results of its proceeding to the Committee.

As presently constituted, the negotiating group could not pretend to negotiate for the entire Committee since its membership did not reflect equitable geographical distribution. His delegation feared that the real intention in establishing the negotiating group was to postpone genuine negotiations.

The CHAIRMAN suggested that perhaps it would be more appropriate to call the subsidiary organ which the Committee had created a "working group". He appealed to members of the Committee to allow a few days for the working group to demonstrate its character and he was personally convinced that the apprehensions which had been expressed would soon be allayed.

Mr. BARNES (Liberia) said that the question of the duration of the negotiating group's mandate was uppermost in his own mind, since it was possible that after the close of the present session, Governments might reconsider or alter their positions. Therefore a time-limit should be imposed on the mandate of the negotiating group.

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(Mr. Barnes, Liberia)

He also wondered, in view of the little time remaining, when the negotiating group would be able to report to the Committee as a whole. The terms of reference of the negotiating group should specifically require that it report to the Committee before any decisions were taken. Each delegation was responsible to its Government and no delegation could presume to negotiate for any other. It was therefore important to emphasize that participation in the negotiating group would be open to members and non-members alike.

Mr. TUNCEL (Turkey) said that his delegation had come to Caracas with a responsibility to represent its Government in a diplomatic conference. Consequently it could not delegate its political responsibility to any organ whatsoever in which it did not have the right to participate on an equal footing. Nevertheless his delegation had no objection to the creation of the working group since the Committee had the right to take steps to facilitate its work.

It was necessary to specify the duration of the working group's mandate. The representative of Brazil had proposed that it should meet until the end of the present session and resume work at the beginning of the next. His delegation could agree with that proposal if it were understood that the group would not meet between sessions of the Conference, since such intersessional meetings would make the participation of non-members difficult and would consequently detract from the political responsibility of the States not participating in the meetings.

There should be no voting in the working group since non-members, while eligible to participate in its work, would not, as the Chairman had explained, have the right to vote. Decisions could be made only in the plenary of the Committee.

His delegation would support any measures aimed at advancing the work of the Committee which were compatible with the fundamental political responsibility all delegations had to their Governments.

Miss MARTIN-SANE (France) agreed with the description of a subsidiary organ given by the representative of Morocco and emphasized that it was her understanding that, in keeping with the general philosophy of the Conference, there would be no voting in the working group.

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Mr. THOMPSON-FLORES (Brazil) agreed with the view expressed by the representative of Morocco that the powers of the group were limited to those conferred on it by the Committee. He proposed that the Committee should recommend that the negotiating group should not vote; that it should decide that the negotiating group would exist during the time it took to complete the mandate entrusted to it by the Committee; and that the group should meet only during sessions of the Conference. Referring to the concern expressed by the representatives of Turkey and Barbados with regard to the delegation of power and the remarks by the representatives of Uganda and Peru concerning equitable regional representation he said that the group was open-ended and that any member of the Committee could participate in its discussions on an equal footing at any time. Furthermore, the group would only report on its work; decisions would be taken only in the Committee. As the Group of 77 had adopted a common position on articles 1-21, his delegation could agree that the Group be represented in the negotiating group by one of its members.

The CHAIRMAN said that the Committee reserved the right to fix the duration of the negotiating group.

Mr. RATINER (United States of America) asked whether it would be possible to take a decision on the proposal submitted by the representative of Brazil.

Mr. WALDRON-RAMSEY (Barbados) agreed with the views expressed by the representative of Peru and the Chairman with regard to voting. It was the general understanding of the Conference that as far as possible, agreement should be reached within the context of the gentleman's agreement. That view should be extended to apply also to all its subsidiary organs. There was therefore no need for the Committee to recommend that the negotiating group should not vote. His delegation had consistently maintained that the Sea-Bed Committee should be governed by the rules of procedure of the General Assembly though it should endeavour to accomplish its work without recourse to voting.

If the group was to have the extensive mandate proposed by the representative of Brazil, it would have to work indefinitely. His delegation was prepared to agree that each session could decide to set up instances but it would invite a vote on the extent of the mandate and the duration of the working group.

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The CHAIRMAN asked whether a general understanding that there would be no voting in the group would not reflect the wishes of the Committee. Would the representatives of Barbados and Brazil accept that the negotiating group would exist as long as the Committee considered necessary for the completion of its mandate. The Committee could ask the Chairman of the working group for a preliminary report before the end of the present session or it could adopt Sea-Bed Committee procedure and ask for a report within five days of the opening of the next session. The group would meet only during sessions of the Conference but that would not prevent individual delegations from making efforts to reach agreement between sessions.

Mr. DE SOTO (Peru) said that it should be clearly understood that the group was being established under rule 50 of the rules of procedure in order to ensure permanent contact with the Committee through the Chairman of the Committee. However, the question of the mandate and constitution of the group should not be raised each time it presented a report.

Mr. VANDERPUYE (Ghana) requested the Chairman to clarify his statement that the group would meet only during sessions but that that did not preclude the possibility of intersessional meetings of delegations.

The CHAIRMAN said that the group should not meet as a group between sessions but that the possibility of meetings between interested groups to consider outstanding problems could not be excluded.

Mr. OGOLA (Uganda) requested clarification on the constitutional position of the Chairman of the working group, his role in relation to the Chairman of the Committee and the system of checks and balances to be applied to the working group.

The CHAIRMAN said that the Committee was the supreme organ and that any instance established was a subsidiary organ. The working group would submit periodic reports to the Committee.

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Mr. KO Tsai-shuo (China) agreed with the basic spirit of the Brazilian proposal. However, the Committee should pay special attention to the views expressed by various delegations and particularly those of the representatives of Turkey and Uganda. The group should be regarded as a subsidiary organ of the Committee established for the purpose of facilitating the work of the Committee. Obviously, such a group was not entitled to make independent decisions and should submit reports only to the Committee. The Committee alone could take final decisions. The working group should perform the specific functions assigned to it by the Committee and its mandate should be terminated when it had fulfilled that function.

The composition of the group did not conform to the principle of equitable geographical distribution. However, having noted the statements of various delegations and the views expressed by the representative of Brazil, his delegation was prepared to accept the proposed composition in view of the special circumstances, though he wished to state clearly that the composition of the working group should not be regarded as a precedent.

Mr. RATINER (United States of America) supported the proposal by the representative of Brazil that the negotiating group should not vote and that it should exist during the time it took to fulfil the mandate entrusted to it by the Committee. The question of intersessional meetings had been raised in the General Committee. He wondered therefore, whether the Committee might defer consideration of the proposal that the working group should not meet between sessions until the General Committee had discussed that item. A decision taken in one committee was a persuasive factor and could affect the work of other committees. However, he would not stand in the way of the consensus at the present meeting.

The CHAIRMAN said that the discussions in the General Committee were concerned with meetings at a much higher level. He invited the Committee to accept his previous interpretation of the proposals concerning the working group. He would request the Chairman of the group to ensure that it commenced its work immediately and to present a report to the Committee before the end of the present session.

The proposed composition of the working group was as follows: representing the African group: Algeria, Egypt, Ghana, Lesotho, Madagascar, Mali, Morocco, Nigeria and Tanzania; representing the Asian group: China, India, Iran, Kuwait, Pakistan, Singapore, Yugoslavia, Afghanistan alternating with Nepal and Philippines alternating with

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Indonesia; representing the group of Latin American countries: Bolivia, Brazil, Chile, Honduras, Jamaica, Mexico, Peru, Trinidad and Tobago, and Venezuela; representing the Western European group and others: Austria, Canada, Federal Republic of Germany, Italy, Netherlands, Norway, Sweden, Switzerland and the United Kingdom; representing the Eastern European group: the Byelorussian Soviet Socialist Republic, the Czechoslovak Socialist Republic, the German Democratic Republic, the Hungarian Peoples' Republic, the People's Republic of Bulgaria, the Polish Peoples' Republic, the Socialist Republic of Romania, the Ukrainian Soviet Socialist Republic, and the Union of Soviet Socialist Republics; representatives for proposals: Australia, Japan, United States of America, Colombia acting as representative for the proposals by the Group of 77 and France for the eight-Power proposals.

If he saw no objection he would take it that the list was acceptable to the Committee.

It was so decided.

Mr. ZEGERS (Chile) requested the Secretariat to prepare a study in co-operation with UNCTAD on the economic implications of sea-bed mining in accordance with the provisions of General Assembly resolution 2750 (XXV) before the next session of the Conference. That study should examine three basic aspects of the question: the updating of the description of activities being carried out in the area with particular emphasis on nodule mining; further analysis of possible solutions to minimize the adverse economic effects of sea-bed mining, taking into account the solutions or alternative methods proposed in the reports by the Secretary-General and UNCTAD, the debates in the Committee and the summaries by the Chairman of the Committee; consideration of possible measures to be adopted by the authority to minimize such adverse effects and related powers.

Mr. RATINER (United States of America) said that the precise terms of reference of such a study should be discussed in the Committee. The question of the economic implication of sea-bed mining had already been considered and his delegation had detected a shifting of views on the subject in the course of the discussions. He wondered whether there should be an updating of the study or whether, in presenting the report in document A/CONF.62/25, the Secretary-General had not completed the mandate entrusted to him under General Assembly resolution 2750 (XXV). His delegation would

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(Mr. Ratiner, United States)

like to ensure that such a study presented a properly balanced view. He would like to have an opportunity to consider the suggestion by the representative of Chile and to state his views at a future meeting of the Committee.

Mr. IMAN (Kuwait) said that when his delegation had submitted the draft resolution to the First Committee of the General Assembly requesting a study of the adverse effects of sea-bed mining on land-based production, it had asked for periodic reports on the subject. The representative of Chile had not asked for a new study, he had merely requested the Secretariat to take note of his request in order to ensure that future reports were as pertinent and comprehensive as possible and took account of all relevant proposals.

The CHAIRMAN said that all delegations had the right to request the Secretariat to take note of items which they would like to see included in its report. Two delegations had requested the Secretariat to provide an updating of the economic implications of sea-bed mining in time for the next session of the Conference. The representative of the United States could take the floor at future meetings of the Committee to request the inclusion of additional material or to ensure that certain matters were discussed.

The meeting rose at 6.50 p.m.